

**From:** [Laidlaw, Tina](#)  
**To:** ["Suplee, Mike"](#)  
**Subject:** LOT comments  
**Date:** Monday, December 09, 2013 3:52:00 PM

---

I left a message for Dave earlier today and will try him again soon. Here are our comments on Discharger Specific Variances (DSV).

Tina

In our August 22, 2013 comment letter to Colorado we included this comment:

- 1) Feasibility Tests. Both the rule and draft policy explain that requests for a DSV must address one of three feasibility tests: (1) limits of technology, (2) economics, and (3) other consequences. Our current thinking is that with respect to each of these tests, there may be site-specific circumstances in Colorado where it would be reasonable for the Commission to consider adoption of discharger-specific variances (i.e., provided the demonstration also shows that a 40 CFR 131.10(g) factor has been met). While none of the EPA's 131.10(g) factors include the phrase "limits of technology," such technology limits may be relevant to a demonstration provided under 131.10(g), e.g., if water quality based controls would "result in substantial and widespread economic and social impacts." In addition, EPA notes that although the text of 31.7(4) regarding the "other consequences test" is consistent with 131.10(g)(3) the draft guidance does not include mention of the regulatory requirement that a variance based on 131.10(g)(3) must specifically address how human caused conditions or sources of pollution prevent the attainment of the use.

In general, however, EPA does not view these tests in 31.7(4) as inconsistent with the federal regulations, and our perspective is that draft Policy 13-1 includes useful discussion of the types of supporting information that would need to be submitted. However, we want to be clear that: (1) DSV adoption must be based on site-specific facts and circumstances, (2) supporting evidence must be defensible (e.g., it must demonstrate that the WQBEL, and by extension the underlying WQS, is not feasible to attain), and (3) today's comment letter is not, and should not be interpreted as, an EPA endorsement of DSV adoption in any particular case. Such decisions can only be made by completing a rulemaking to revise the WQS for an individual segment (Regulations 32-38) based on review of site-specific information. As such, each individual DSV will be a Colorado WQS rule change that must be submitted to EPA for review and approval (40 CFR Section 131.20(c)).